



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1995

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-144

Dear Ms. Briggs:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30357.

The City of Houston (the "city") received a request for letters sent by Lieutenant Craig Goralski and Assistant Police Chief Clarence Bradford of the Houston Police Department (the "department") to Chief of Police Sam Nuchia concerning the requestor. You have submitted the letters in question to this office for review. The requestor, a police officer, has apparently been suspended from the department and has appealed that suspension to the city's civil service commission pursuant to the provisions of chapter 143 of the Local Government Code. Olophius E. Perry, the attorney representing the city in arbitration proceedings concerning the requestor's suspension, sent this office an affidavit stating that the officer was suspended for alleged misconduct and that the letters at issue are "directly related to the arbitration proceedings." You contend that these letters are excepted from disclosure pursuant to section 552.103(a).

Section 143.089(a)(2) of the Local Government Code mandates that documents relating to "any misconduct by the fire fighter or police officer" must be placed in a police officer's civil service file "if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter." Since it appears that the documents are related to the alleged misconduct, we assume that the documents are part of the officer's civil service file. Section 143.089(e) states that a police officer "is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file." Section 143.089(e) of the Local Government Code thus lays out

a system of mandatory access to civil service records that prevails over the section 552.103(a) exception from disclosure. *See* Open Records Decision No. 598 (1991) at 3-4 (provisions of Government Code 552 do not prevail over special rights of access to records).

The requestor indicates that the documents at issue may be in the department's internal affairs file. Section 143.089(g) of the Local Government Code allows for the maintenance of a separate departmental file in addition to the civil service file provided for in section 143.089(a)(2). This separate file is for the department's own internal use:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

A request for information in the internal file must be referred to the civil service director or his designee. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). If the letters were part of the internal affairs file but were transferred to the requestor's civil service file pursuant to section 143.089(a)(2), they must be released to the requestor in accordance with the mandatory access provision of section 143.089(e).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 30357

Enclosures: Submitted documents